

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Rolando Vasquez	Team: Squad #13	CCRB Case #: 201904589	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Monday, 05/20/2019 11:30 PM	Location of Incident: 11th Avenue/West 40th Street; En route to the 7th Precinct stationhouse; 7th Precinct stationhouse.	Precinct: 10	18 Mo. SOL 11/20/2020	EO SOL 7/7/2021	
Date/Time CV Reported Tue, 05/28/2019 1:47 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 05/28/2019 1:47 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Christopher Weigand	07011	934254	CW T TF
2. POM Fidel Hernandez	20876	930339	CW T TF

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM John Mascetti	16396	943710	CW T TF

Officer(s)	Allegation	Investigator Recommendation
A.POM Fidel Hernandez	Abuse: At 11th Avenue and West 40th Street in Manhattan, Police Officer Fidel Hernandez searched the vehicle in which § 87(2)(b) was an occupant.	§ 87(2)(g)
B.POM Christopher Weigand	Discourtesy: En route to the 7th Precinct stationhouse, Police Officer Christopher Weigand spoke discourteously to § 87(2)(b)	§ 87(2)(g)
C.POM Christopher Weigand	Off. Language: En route to the 7th Precinct stationhouse, Police Officer Christopher Weigand made remarks to § 87(2)(b) based upon the gender of § 87(2)(b)	§ 87(2)(g)
D.POM Christopher Weigand	Off. Language: At the 7th Precinct stationhouse, Police Officer Christopher Weigand made remarks to § 87(2)(b) based upon the gender of § 87(2)(b)	§ 87(2)(g)
E.POM Fidel Hernandez	Abuse: At the 7th Precinct stationhouse, Police Officer Fidel Hernandez searched the vehicle in which § 87(2)(b) was an occupant.	§ 87(2)(g)

Case Summary

On May 28, 2019, § 87(2)(b) called the CCRB and filed this complaint.

On May 20, 2019, at about 11:30 p.m., § 87(2)(b) was driving near 11th Avenue and West 40th Street in Manhattan. § 87(2)(b) was stopped by PO Christopher Weigand and PO Fidel Hernandez of the Citywide Traffic Task Force. § 87(2)(b) was arrested for driving under the influence of alcohol. PO Hernandez searched § 87(2)(b)'s vehicle (**Allegation A: Abuse of Authority, § 87(2)(g)**). En route to the stationhouse, PO Weigand allegedly spoke discourteously to § 87(2)(b) and allegedly made offensive remarks about her gender (**Allegations B-C: Discourtesy/Offensive Language, § 87(2)(g)**). At the 7th Precinct stationhouse, PO Weigand allegedly made offensive remarks about § 87(2)(b)'s gender (**Allegation D: Offensive Language, § 87(2)(g)**). PO Hernandez conducted an inventory search of § 87(2)(b)'s vehicle at the 7th Precinct stationhouse (**Allegation E: Abuse of Authority, § 87(2)(g)**). § 87(2)(b) pled guilty to driving while intoxicated § 87(2)(b).

There is no video evidence in this case.

Findings and Recommendations

Allegation (A) Abuse of Authority: At 11th Avenue and West 40th Street in Manhattan, Police Officer Fidel Hernandez searched the vehicle in which § 87(2)(b) was an occupant.
Allegation (E) Abuse of Authority: At the 7th Precinct stationhouse, Police Officer Fidel Hernandez searched the vehicle in which § 87(2)(b) was an occupant.

§ 87(2)(b) testified that she was driving and stuck in traffic when PO Weigand knocked on her driver's window and ordered her to pull over (BR01). § 87(2)(b) denied that she had consumed any alcohol before driving. PO Weigand ran § 87(2)(b)'s driver's permit, told her she had an open warrant, and arrested her. She was placed in the back of a police vehicle, where she observed PO Hernandez enter her vehicle, though § 87(2)(b) could not see what PO Hernandez did inside it. § 87(2)(b)'s vehicle was vouchered and she returned to the stationhouse the next day to retrieve her vehicle. § 87(2)(b) did not notice any disruption to her vehicle except that her phone, wallet, and clothing were missing because they were vouchered as arrest evidence.

PO Weigand and PO Hernandez provided the following § 87(2)(g) testimony (BR02-03). While working on a footpost, the officers saw § 87(2)(b) make a left turn in her vehicle without signaling. PO Weigand and PO Hernandez flagged down § 87(2)(b) and she pulled over. PO Weigand and PO Hernandez started speaking with § 87(2)(b) and immediately smelled a strong odor of alcohol coming from § 87(2)(b). § 87(2)(b) refused to take a breathalyzer test. She was arrested for driving under the influence of alcohol, and transported to the 7th Precinct stationhouse by PO Weigand and PO John Mascetti of the Citywide Traffic Task Force, who was also posted at the intersection. PO Hernandez transported § 87(2)(b)'s vehicle to the stationhouse.

PO Hernandez testified that he conducted a brief search of the glove compartment, door panel, and area surrounding the driver's seat of § 87(2)(b)'s vehicle for his safety because he was transporting the vehicle to the stationhouse. PO Hernandez performed a complete inventory search of § 87(2)(b)'s vehicle at the stationhouse. Since § 87(2)(b) refused to take a breathalyzer test and was arrested for driving under the influence of alcohol, her vehicle was subject to forfeiture. As such, it had to be searched and its contents inventoried. PO Hernandez removed property from the vehicle, he did not remember what items, placed the property into bags, and gave the property to PO Weigand, § 87(2)(b)'s arresting officer. PO Weigand generated property vouchers for § 87(2)(b)'s vehicle and various items found within, including cell phones, a wallet, and various articles of clothing (BR05).

An officer may search a vehicle which is to be transported to the stationhouse to ensure his safety until a more complete inventory search can be conducted. People v. Dickens, 218 A.D.2d 584 (1995) (BR10). Whenever a vehicle comes into the custody of the police department, an inventory search will be conducted to protect property, ensure against unwarranted claims of theft, and protect uniformed members of the service and others against dangerous instrumentalities. During an inventory search of a vehicle, any area of the vehicle which may contain valuables are to be searched. Any valuables found in the vehicle are to be removed and vouchered. NYPD Patrol Guide, Procedure 218-13 (BR06).

§ 87(2)(b), § 87(2)(g)

Allegation (B) Discourtesy: En route to the 7th Precinct stationhouse, Police Officer

Christopher Weigand spoke discourteously to § 87(2)(b)

Allegation (C) Offensive Language: En route to the 7th Precinct stationhouse, Police Officer

Christopher Weigand made remarks to § 87(2)(b) based upon the gender of § 87(2)(b)

Allegation (D) Offensive Language: At the 7th Precinct stationhouse, Police Officer

Christopher Weigand made remarks to § 87(2)(b) based upon the gender of § 87(2)(b)

§ 87(2)(b) testified that en route to the stationhouse, PO Weigand asked § 87(2)(b) what she did for a living. § 87(2)(b) asked “what the hell” PO Weigand was talking about and asked why her car was stopped. PO Weigand said, “Shut the fuck up.” § 87(2)(b) told him to “shut the fuck up.” PO Weigand asked § 87(2)(b) if she was a dancer, which § 87(2)(b) interpreted as an offensive remark against her gender. § 87(2)(b) did not remember anything else that was said during the ride. At the stationhouse, § 87(2)(b) was lodged in a holding cell by herself. There, PO Weigand told her, “You’re a drunk driver. You have a DUI history. Bitch, you’re going to blow.” § 87(2)(b) was brought to another room where she refused to take a breathalyzer test.

PO Weigand denied that there was any conversation between himself and § 87(2)(b) en route to the stationhouse. At the stationhouse, PO Weigand again asked § 87(2)(b) to submit to a breathalyzer exam, but she refused. PO Weigand denied asking § 87(2)(b) if she was a dancer, denied telling her to shut the fuck up, and denied calling her a bitch at any point. PO Weigand denied that he used any profanity toward § 87(2)(b). PO Mascetti did not recall PO Weigand speaking discourteously or offensively toward § 87(2)(b) and PO Hernandez denied hearing PO Weigand do so.

§ 87(2)(g), § 87(2)(b)

Civilian and Officer CCRB Histories

- This is the second CCRB complaint to which § 87(2)(b) has been a party (BR07).
 - § 87(2)(b)
- PO Weigand has been a member of the service for 16 years and has been a subject in five prior CCRB complaints involving seven allegations, none of which were substantiated. § 87(2)(g)

- PO Hernandez has been a member of the service for 17 years and has been a subject in five prior CCRB complaints involving 15 allegations, none of which were substantiated. [REDACTED]
§ 87(2)(g) [REDACTED]

Mediation, Civil and Criminal Histories

- This complaint was not suitable for mediation.
- The NYC Office of the Comptroller has no history of a Notice of Claim having been filed by § 87(2)(b) [REDACTED] about this incident (BR08).
- § 87(2)(b) [REDACTED] has no history of any criminal convictions in New York City (BR09).

Squad No.: 13

Investigator:	<u>Rolando Vasquez</u> Signature	<u>SI Rolando Vasquez</u> Print Title & Name	<u>04/17/2020</u> Date
Squad Leader:	<u>Laura Kastner</u> Signature	<u>IM Laura Kastner</u> Print Title & Name	<u>04/17/2020</u> Date